

**Amendment and Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure**

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Serial No.: 10/702,369

Confirmation No.: 8480

Filed: 6 November 2003

For: BEAK TREATMENT WITH TONGUE PROTECTION**Remarks**

The Office Action mailed 3 November 2006 has been received and reviewed. Claim 8 has been amended, claims 6 and 7 canceled and new claims 24-27 have been presented, leaving claims 1-5 and 8-27 pending after entry of the amendments presented in this response. Reconsideration and withdrawal of the rejections are respectfully requested.

**Claims 6 & 7**

Claims 6 & 7 have been cancelled by Applicants because, during preparation of this response Applicants determined that these claims were duplicative of claims 1 and 4 due to amendments previously presented during prosecution of this application. As a result, the cancellation of claims 6 and 7 is made without prejudice.

**Allowable Claims**

Applicants note that claims 22 and 23 are indicated as allowable, and that claims 14 and 18 would be allowable if rewritten in independent form.

**New Claims 24-27**

New claims 24-27 are presented to provide Applicants with more comprehensive protection of the invention.

Support for new claims 24 and 25 can be found in the claims as originally filed and in the application at, e.g., Figures 1 and 2.

Support for new claims 26 and 27 can be found in the claims as originally filed and in the application at, e.g., p. 9, line 3 to p. 10, line 5.

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**The 35 U.S.C. §103 Rejection**

Claims 1-13, 15-17, and 19-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gourlandt (U.S. Patent No. 4,446,819) in view of Meyn (Netherlands Patent NL 8802812 A). This rejection is respectfully traversed as discussed herein for pending claims 1-5, 8-13, 15-17, and 19-21 (with claims 6 & 7 having been canceled in this response).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143.

Applicants submit that the proposed combination of Gourlandt in view of Meyn does not establish a *prima facie* case of obviousness for claims 1-5, 8-13, 15-17, and 19-21 because the references, taken alone or combined, do not teach or suggest all of the claim limitations.

**Claims 12, 16 & 19**

Claims 12, 16 and 19 each recite that "the tongue control protrusion is fixedly mounted relative to the beak receiving aperture." Neither Gourlandt nor Meyn teach or suggest such a feature.

It is asserted in support of the rejection of claims 12 and 16 (but not claim 19) that "Gourlandt as modified teaches [that] the tongue control protrusion extends into the beak receiving aperture by a fixed distance (Gourlandt Fig. 6 #62)." Office Action, p. 5 (November 3, 2006). Applicants respectfully submit that this assertion cannot support a *prima facie* case of obviousness with respect to claims 12 and 16 (or claim 19).

First, Applicants note that the language "fixed distance" is not even recited in claims 12 and 16 (or claim 19). Rather, as indicated above, each of these claims recites that "the tongue

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control protrusion is fixedly mounted relative to the beak receiving aperture." Exemplary embodiments of this feature are described in the specification at, e.g., p. 9, lines 3-12 and the fixedly-mounted tongue control protrusions are contrasted with tongue control protrusions that can move, *see, e.g.,* p. 9, line 18 to p. 10, line 5.

Second, the feature of Gourlandt recited as teaching a fixedly-mounted tongue control protrusion (the control member 62) is not fixed or stationary. Rather, the control member 62 must move to operate the retainers 66 that hold a bird in place in the Gourlandt apparatus. The relevant portion of Gourlandt reads as follows:

When arms 84 and 86 are against each other to hold the retainers open, rod (control member) 62 is pivoted somewhat outwardly from front piece 50. The spring 90 biases post 88 in this position. Inward movement of the control member 62 causes post 88 to pivot, moving arm 86 away from arm 84 to release the latter and allow spring 70 to close retainers 66, rotating cam 80 until it is aligned and balanced between the retainers (FIG. 4).  
Gourlandt, col. 5, lines 21-28 (emphasis added).

As discussed in section of Gourlandt reproduced above, the control member 62 moves during use of the disclosed apparatus. As a result, any assertion that the control member 62 is "fixedly-mounted relative to the beak receiving aperture" cannot be supported by the reference. Furthermore, Meyn does not address the deficiencies of Gourlandt in this regard.

For at least these reasons, Applicants respectfully submit that a *prima facie* case of obviousness has not been established with respect to claims 12, 16 and 19 over Gourlandt in view of Meyn. Reconsideration and withdrawal of the obviousness rejection of claims 12, 16 and 19 are, therefore, respectfully requested.

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Claims 1-13, 15-17 and 19-21

Applicants also respectfully submit that a *prima facie* case of obviousness has not been established for claims 1-5, 8-13, 15-17 and 19-21.

In support of this rejection it is asserted, among other things, that Gourlandt teaches "using a tongue control protrusion protruding from a surface defining the beak receiving aperture in the bird head positioning device." Office Action, p. 2 (November 3, 2006). The above assertion is accompanied by a citation to Gourlandt, col. 4, lines 51-59 and elements 62 and 21. Although not explicitly stated, it would appear that the rejection is based on an assumption that element 21 (described in Gourlandt as a "notch 21") is the surface of a beak receiving aperture formed in the bird head positioning device, while element 62 (described in Gourlandt as the "control member 62") is the tongue control protrusion. Applicants respectfully disagree that these elements can be considered a surface of a beak receiving aperture in a bird head positioning device or a tongue control protrusion as recited in claims 1-5, 8-13, 15-17 and 19-21.

With respect to the surface of the beak receiving aperture, Applicants note that the beak receiving aperture of the rejected claims is recited as being "formed through the first and second major sides of the bird head positioning device." It is asserted in the Office Action that element 30 (described in Gourlandt as a "bird support 30") is the equivalent of a "bird head positioning device." Notches 21 are, however, formed in the turntable 20 on which the bird supports 30 are mounted. *See, e.g.*, Gourlandt, col. 4, lines 21-25. Notches 21 are not formed in the bird supports 30 and, thus, cannot be the surface of a beak receiving aperture "formed through the first and second major sides of the bird head positioning device" as recited in the rejected claims. As a result, any assertion that notch 21 is the equivalent of "a surface defining the beak receiving aperture" as recited in the rejected claims cannot be maintained because the notch 21 is not "formed through the first and second major sides of the bird head positioning device" as recited in the rejected claims.

In addition, the control member 62 of Gourlandt, which is asserted as the equivalent of the tongue control protrusion recited in claims 1-5, 8-13, 15-17 and 19-21, does not "protrude

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from a surface defining the beak receiving aperture" as recited in the rejected claims because notch 21 is not a "surface defining the beak receiving aperture" as discussed above. For at least these reasons, Applicants respectfully submit that the control member 62 cannot serve as the tongue control protrusion recited in claims 1-5, 8-13, 15-17 and 19-21.

In addition, it is not asserted that Meyn teaches or suggests any of the features that are missing in Gourlandt, and Applicants submit that Meyn does not, in fact, address any of these deficiencies of Gourlandt.

In view of the above, Applicants submit that Gourlandt and Meyn, alone or in combination, cannot support the asserted case of *prima facie* obviousness with respect to claims 1-5, 8-13, 15-17 and 19-21 because the references do not teach all of the features recited in the rejected claims. Reconsideration and withdrawal of the obviousness rejection of claims 1-5, 8-13, 15-17, and 19-21 are, therefore, respectfully requested.

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It is respectfully submitted that pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 5th day of March, 2007, at 12:41pm (Central Time).

By: Sam S. WightName: Sam S. Wight